

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

**CIVIL CASE NOS. 5:06cv068
[Lead Case]**

VARNELL, STRUCK & ASSOCIATES, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	5:06cv068
)	
LOWE'S COMPANIES, INC.,)	
)	
Defendant.)	
)	
<hr style="width:40%; margin-left:0"/>)	<u>ORDER</u>
)	
LOWE'S COMPANIES, INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
)	5:07cv104
VARNELL, STRUCK AND)	
ASSOCIATES, INC., DAVID STRUCK,)	
and JOHN VARNELL,)	
)	
Defendants.)	
<hr style="width:40%; margin-left:0"/>)	

THIS MATTER is before the Court on the Magistrate Judge's
Memorandum and Recommendation [Doc. 39], filed on March 28, 2008 in

the case of Lowe's Companies, Inc. v. Varnell, Struck and Associates, Inc., Civil Case No. 5:07cv104.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell was designated to consider pending motions in the above-referenced civil action and to submit to this Court a recommendation for the disposition of these motions.

On March 28, 2008, the Magistrate Judge filed a Memorandum and Recommendation [Doc. 39] containing proposed findings of fact and conclusions of law in support of a recommendation that the Motion to Dismiss [Doc. 11] filed by the Defendant Varnell, Struck and Associates, Inc. and the Motion to Dismiss [Doc. 14] filed by the Defendants David Struck and John Varnell be denied and that Civil Case No. 5:07cv104 be consolidated with Varnell, Struck & Associates, Inc. v. Lowe's Companies, Inc., Civil Case No. 5:06cv68. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within ten (10) days of service of the Recommendation. The period within which to file objections has expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the Magistrate Judge reached the correct legal result.¹ Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation [Doc. 39] that the Motion to Dismiss [Doc. 11] filed by the Defendant Varnell, Struck and Associates, Inc. and the Motion to Dismiss [Doc. 14] filed by the Defendants David Struck and John Varnell be denied and that this action be consolidated with Varnell, Struck & Associates, Inc. v. Lowe's Companies, Inc., Civil Case No. 5:06cv068, in accordance with Rule 42(a) of the Federal Rules of Civil Procedure.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss [Doc. 11] filed by the Defendant Varnell, Struck and Associates, Inc. is **DENIED**.

IT IS FURTHER ORDERED that the Motion to Dismiss [Doc. 14] filed by the Defendants David Struck and John Varnell is **DENIED**.

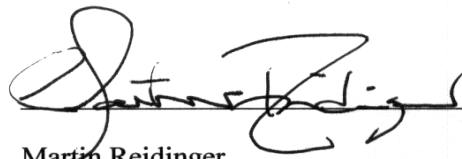
IT IS FURTHER ORDERED that this action is hereby **CONSOLIDATED** with Varnell, Struck & Associates, Inc. v. Lowe's Companies, Inc., Civil Case No. 5:06cv068, in accordance with Rule 42(a)

¹In accepting the Magistrate Judge's Recommendation [Doc. 39], the Court notes that one of the primary arguments advanced by the Defendants – that all of Lowe's claims should have been asserted as compulsory counterclaims in the 5:06cv068 action – is rendered moot by the consolidation of these civil actions.

of the Federal Rules of Civil Procedure. Civil Case No. 5:06cv068 is hereby designated the lead case, and Civil Case No. 5:07cv104 is closed. Pursuant to Local Rule 5.2.1(D), all future proceedings will be docketed and filed in the designated lead case only.

IT IS SO ORDERED.

Signed: April 21, 2008


Martin Reidinger
United States District Judge

